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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,254	03/17/2004	Marc D. Etchells	2186.005USU	4331

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EXAMINER

HAND, MELANIE JO

ART UNIT PAPER NUMBER

3761

DATE MAILED: 04/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/802,254

Applicant(s)

ETCHELLS, MARC D.

Examiner

Melanie J. Hand

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/16/04, 9/26/05.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Priority***

Acknowledgment is made of applicant's claim for priority under copending Provisional Application No. 60/455,305, filed on March 17, 2003.

### ***Information Disclosure Statements***

The information disclosure statements (IDS) submitted on June 16, 2004 and August 26, 2005 was filed after the mailing date of the Application on March 17, 2004. The submissions are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

### ***Claim Objections***

Claim 12 is objected to because of the following informalities: the acronym "PVA" must be spelled out in full form. "PVA" can stand for either polyvinyl alcohol or polyvinyl acetate. Its true meaning within the claim is unclear since the disclosure mentions only ethylene vinyl acetate (EVA), which is only one example of a polyvinyl acetate. Examiner is addressing claim 12 based on the assumption that applicant is referring to polyvinyl acetate and requests correction or confirmation from applicant in a response to this Office action. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-12, 20, 22, 24 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Darnett (U.S. Patent No. 6,270,873).

With respect to **Claims 1,4,5,7,8,25**: Darnett teaches an absorbent food pad comprising microperforated laminate polyethylene top sheet 10, bottom sheet 11 which is identical to topsheet 10, and pouches 14 of superabsorbent material, which constitute a complex shape.

There is at least one pouch, therefore other embodiments taught by Darnett having, for example four (Fig. 1a) or twelve (Fig. 4a) pouches, define other complex shapes such that the pad has at least one complex shape. (Col. 6, lines 39-56)

With respect to **Claim 2**: As can best be seen from Fig. 4a, Darnett teaches an extended rectangle.

With respect to **Claims 3,6,9**: Darnett teaches that the top and bottom sheets 10,11 are comprised of three layers. (Col. 7, lines 33-36) With respect to claim 9, Darnett teaches a thickness of 42 microns for a two-layer embodiment and 37 microns plus the thickness of the intermediate paper sheet 22. Examiner asserts that the thickness of the three-layer embodiment is intended to be substantially identical to the two-layer embodiment, therefore the range of

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thicknesses taught by Darnett is 37-42 microns, or 0.0014 – 0.0017 inches, which falls within the range set forth in claim 9.

With respect to **Claim 10**: Pouches 14 contain superabsorbent polymer. (Col. 4, lines 13-15, Col. 6, lines 47-49)

With respect to **Claims 11,12,22**: Darnett teaches pads having at least two pouches 14. The pouches are separated from each other by heat sealing the top and bottom sheets 10,11 together around the periphery of the cells or other means. Darnett teaches a paper (i.e. cellulose) barrier layer between the absorbent material and the top sheet. (Col. 3, lines 43-48)

With respect to **Claim 20**: Please see the rejection of Claim 1 in addition to the following: The areas between pouches 14 where the topsheet 10 and bottom sheet 11 are sealed together form channels for transporting liquid.

With respect to **Claim 24**: Darnett teaches a bottom sheet in Fig. 12 that is non-perforated. (Col. 7, lines 60-64)

With respect to **Claim 26**: Darnett teaches varying the microperforation size and shape to compliment the type of absorbent used to minimize loss of absorbent through the pouch wall, therefore Examiner asserts that the variation is capable of existing in a single sheet, defining a pre-determined pattern.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 18 and 19 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Darnett.

With respect to **Claims 18,19**: Please see the rejection of claim 1 in addition to the following:

Darnett does not teach electrostatically holding pouches 14 in place prior to sealing thus forming a bond between the topsheet 10 and bottom sheet 11 without the use of adhesive, however the method of sealing the pouches in place is an alternate method of holding said pouches electrostatically in place or corona treating the top or bottom sheet, producing an identical product. Claim 18 is thus unpatentable over the prior art of Darnett. See *In re Marosi*, 710 F.2d 799, 218 USPQ 289 (Fed. Cir. 1983) and *In re Thorpe*, 777 F.2d 695, 227 USPQ 964 (Fed. Cir. 1985). See also MPEP § 2113.

Claims 21, 23, 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Darnett ('873).

With respect to **Claim 21**: Darnett teaches a barrier sheet that would form additional liquid channels between the topsheet and said barrier sheet. Darnett does not teach that the barrier sheet extends horizontally beyond the topsheet 10, however it would be obvious to one of ordinary skill in the art to change the dimensions of said barrier sheet so as to accomplish this feature. It has been held that where general conditions of claim are disclosed in prior art, it is not inventive to discover optimum or workable ranges by routine experimentation. See *In re Aller*, *Lacey and Hall* (105 USPQ 233, CCPA, 1955).

With respect to **Claim 23**: Darnett does not teach kiss cutting the top and bottom sheets, however Examiner asserts that the product of Darnett which utilizes microperforation on one layer of the top and bottom sheets is substantially identical to the claimed invention. Claim 23 is thus unpatentable over the prior art of Darnett. See *In re Marosi*, 710 F.2d 799, 218 USPQ 289 (Fed. Cir. 1983) and *In re Thorpe*, 777 F.2d 695, 227 USPQ 964 (Fed. Cir. 1985). See also MPEP § 2113.

With respect to **Claim 27**: Please see the rejection of Claim 1 in addition to the following: Darnett does not teach a metallocene polyethylene, however Examiner asserts that the prior art of Darnett is substantially identical to the claimed invention having a metallocene polyethylene film. The limitation with respect to metallocene polyethylene constitutes product-by-process language with respect to the polyethylene film layers and thus claim 27 is unpatentable over the

prior art of Darnett. See *In re Marosi*, 710 F.2d 799, 218 USPQ 289 (Fed. Cir. 1983) and *In re Thorpe*, 777 F.2d 695, 227 USPQ 964 (Fed. Cir. 1985). See also MPEP § 2113.

With respect to **Claim 28**: Darnett teaches an absorbent food pad comprising microperforated laminate polyethylene top sheet 10, bottom sheet 11 which is identical to topsheet 10, and pouches 14 of superabsorbent material, which constitute a complex shape. There is at least one pouch, therefore other embodiments taught by Darnett having, for example four (Fig. 1a) or twelve (Fig. 4a) pouches, define other complex shapes such that the pad has at least one complex shape. (Col. 6, lines 39-56) Darnett does not teach electrostatically holding pouches 14 in place prior to sealing thus forming a bond between the topsheet 10 and bottom sheet 11 without the use of adhesive, however the method of sealing the pouches in place is an alternate method of holding said pouches electrostatically in place or corona treating the top or bottom sheet, producing an identical product. Claim 18 is thus unpatentable over the prior art of Darnett. See *In re Marosi*, 710 F.2d 799, 218 USPQ 289 (Fed. Cir. 1983) and *In re Thorpe*, 777 F.2d 695, 227 USPQ 964 (Fed. Cir. 1985). See also MPEP § 2113.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Darnett ('873) in view of Fontenot et al (U.S. Patent No. 6,926,682)

With respect to **Claim 13**: Darnett does not teach that pouches 14 contain any of the active agents set forth in the group in claim 13. Fontenot teaches a liner for food or food receptacles comprising a backing layer and an absorbent layer which further comprises an antibacterial agent. ('862, Abstract, Col. 3, lines 66,67, Col. 4, lines 1-3, Col. 15, lines 55-61) It would be obvious to one of ordinary skill in the art to provide antifungal means as taught by Fontenot to the pad taught by Darnett as it is also used in direct contact with food.



Claims 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Darnett ('873) in view of Larssonneur et al (U.S. Patent No. 5,320,895).

With respect to **Claims 14-17**: Please see the rejection of Claim 1 in addition to the following: Darnett teaches bottom sheet 11 and pouches 14 of absorbent material, but does not teach one or more side panels hingeably connected to said sheet. Larssonneur teaches an absorbent pad 11 with side edges 110,112 comprised of topsheet 102 and bottom sheet 106 sealed together to enclose the absorbent mat 104. Top and bottom sheets 102,106 are comprised of polyethylene. The pad 11 is adapted to fit in a tray with upstanding walls 13 therefore side edges 110,112 are capable of folding upward to line the walls of the tray. Therefore, they are considered herein to be hingeably connected. These edges line the tray and form a leakage barrier for the fluids absorbed in the center of pad 11, therefore it would be obvious to one of ordinary skill in the art to configure the side edges so as to hingeably connected as taught by Larssonneur.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Melanie J Hand  
Examiner  
Art Unit 3761

MJH

TATYANA ZALUKAEVA  
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